

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

ORIGINAL 77-2095
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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LOUISE TODARO, ERNESTINE DAVIS, DEIDRA PLAIR, :
PHYLLIS KLIPPEL, SYLVIA DAVIS, CLEO BACON, :
IRIS CAPELLA, NAOMI BOSTICK, MARY REED, ALICE :
TAVER, CAROL LEWIN, TAMMY GOLDSTON, MARGARET :
GATLING, TONYA JACKSON, TRACYE CRAIG, BEVERLY :
MASSEY, CARMEN GARCIA, HELEN LAVORE, GLORIA :
TAGGART, MARTA HARDEE, ALTHEA McDANIEL, RUTH :
DOBSON, MADELINE PINEDA, JUDY WHEAT, BERNADETTE :
BROWN, and EVELYN THORPE, on behalf of themselves :
and all other persons similarly situated, :

Plaintiffs-Appellees, :

-against- :

DOCKET NO.
: 77-2095

BENJAMIN WARD, Commissioner of the New York :
State Department of Correctional Services; IAN :
LOUDON, Assistant Commissioner for Health :
Services of the New York State Department of :
Correctional Services: DAVID FROST, Southern :
Regional Director of Health Services of the New :
York State Department of Correctional Services; :
FRANCES CLEMENT, Superintendent of Bedford Hills :
Correctional Facility; HENRY WILLIAMS, Health :
Services Director of Bedford Hills Correctional :
Facility; ROBERT TSCHORN, Surgical Consultant at :
Bedford Hills Correctional Facility; and MARIE :
DALY, Nurse Administrator at Bedford Hills :
Correctional Facility, individually and in their :
official capacities, :

Defendants-Appellants, :

APPELLANTS' BRIEF

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

ARLENE R. SILVERMAN
Assistant Attorney General
of Counsel

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-
Appellees
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-7657-

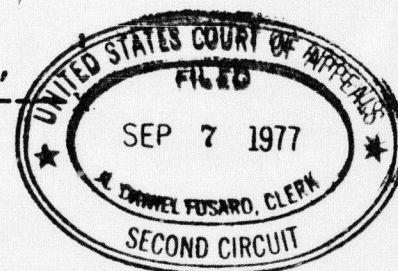


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APPELLANTS' BRIEF

Questions Presented

1. Did the District Court err in holding that some aspects of the medical program at Bedford Hills were constitutionally inadequate, where the Court held the defendants to an optimum standard of medical care in reaching its conclusion?
2. Did the District Court exceed its authority in entering a judgment dictating in minute detail the procedures to

be followed at Bedford Hills and interfering with the judgment of the administrators of the medical program and other professional personnel?

Statement

This is an appeal from a judgment of the United States District Court for the Southern District of New York (Ward, J.) dated July 11, 1977 which granted appellees declaratory and injunctive relief in respect to the medical practices and procedures at the Bedford Hills Correctional Facility, Bedford Hills, New York.

Facts

A. The Health Program at Bedford Hills

The Physical Structures

There are two main areas at the Bedford Hills Correctional Facility designed for the delivery of health care. The first is a building called a Hospital Building* (757). This building houses, among other things, an ambulatory care clinic (757) equipped with two examining rooms (763), a

* This building is not certified nor used as a hospital. As was explained at trial, only ambulatory care is provided at Bedford Hills and inmates requiring hospitalization are sent to an appropriate outside institution (1307).

laboratory (770), a pharmacy (776) an X-ray room and two infirmary corridors, known as sick wing which consists of Hospital 1 (ground floor) (773-775) and Hospital 2 (first floor) (784). The building also houses the nurse / and units for the elderly, handicapped and infirm (Stipulation ¶7).

In addition to the Hospital Building, the medical staff operates a clinic in the residence halls at Bedford Hills. This clinic is known as the Satellite Lobby Clinic* (792-793). This is a small room with a table and cabinets stocked with medication, medical supplies and other equipment (794).

The Resident Staff and Other Services Utilized

The medical staff of the Bedford Hills Correctional Facility consists of a full time Facility Health Services Director, Dr. Henry Williams (832), a part time gynecologist,

* The Hospital Building is located near the administration building which is just beyond the entrance gate to the facility. The residence halls are set further back on the grounds on a hill, known as the upper campus (792-793). There are three connected residence buildings (Numbered 112, 113, 114). The satellite clinic is conducted in a room in the lobby of the center building 113. The hospital building is a five or six minutes walk from the residence building (793).

Dr. Iraj Saadat, who is the Facility Health Services Director at the Taconic Correctional Facility, directly across the road from Bedford Hills (832, 1732), 10 registered nurses (806-8),* a full time laboratory technician, Karen Vagianos (824), a half time pharmacist (828), a full time medical clerk, a full time stenographer (823) and a part time X-ray technician (839). In short, at Bedford Hills there is a comprehensive medical team to provide health care in an ambulatory setting (1309).

In addition to these staff members, Drs. David Ogwo, Poon, and Enders all do general practice at the facility on a fee for services basis (835-837). Specialists also come into the institution. Dr. John Costa, a pediatrician, Dr. Berna Blom, a dermatologist, Dr. Yves LeBrun a neurologist, Dr. Gerald Jacobs, a podiatrist, and Drs. Wexler and Adams, optometrists, hold clinics at Bedford Hills (837-838).

* There are actually nine budget items for nurses. Miss Daly testified that one budget item is filled by two part time nurses. Ms. DeFeo, one budget item, retired. Ms. Chu is doing that full time night duty now (807). This position was to be filled shortly since as Dr. Frost explained, such items are not subject to vacancy control (1343-1344).

Bedford Hills also uses the services of outside consultants and specialty clinics. Patients are brought to the office of the outside consultant or specialty clinic, for example to Dr. Haggadus, an ophthalmologist, to Dr. Pierce, an ophthalmologist, to Dr. Brown, a roentgenologist, and to specialty clinics at the Westchester County Medical Center (Grasslands), the Columbia Eye Institute, etc.

Bedford Hills also uses outside hospitals for diagnostic testing, for emergencies, and for scheduled surgery, e.g. Northern Westchester Hospital, Westchester County Medical Center, (Grasslands), Memorial Hospital, etc. Additionally, plastic surgery is done at the Fishkill Correctional Facility (1157-1159).

In addition to employing a full time pharmacist, the medical department uses the services of an outside commercial laboratory as well as the New York State Laboratory in Albany (825). Bedford Hills maintains its own pharmacy and the medical department also purchases pharmaceuticals from the local pharmacy (828-831).

Their Duties

Dr. Williams, the Facility Health Services Director, spends 5 to 6 hours at the facility, 5 days per week (834). He has a specialty in radiology but does general practice at Bedford Hills (1485). He does the admission, work release and parole physical examinations and follows the chronically ill or troublesome cases (1494, 1536). He also does chart reviews. If a patient has a lingering illness, he goes through the chart to see if it is complete and he may meet with other doctors on it (1540-1541). He also tries to see the residents in sick wing every day, but, in any event, a minimum of 3 days a week (1540). He applies the same standards to Bedford Hills that he applies to his own private practice (1490).*

Dr. Saadat spends approximately 2 hours per day at the Facility, 5 days a week (832). Eight to ten women

* He has instituted a training program for diabetics. They learn to take their own insulin and do their own urine tests (1544-45).

are scheduled for him each day (1008), or from forty to fifty each week.*

In addition to their work on the premises, Dr. Williams and Dr. Saadat alternate calls on nights and weekends so the facility is covered 24 hours a day, seven days a week, by a physician (835).

Dr. Harry David who does general practice at the facility is a specialist in urology. He is at the facility Monday and Thursday from 9 a.m. to noon (835). Dr. Ogwo is also a urologist who does general practice at the facility. He is at the facility on Tuesdays and Wednesdays, from 10 a.m. to 1 p.m. (836). Dr. Poon does general practice on Fridays, from 9 a.m. to 12 p.m., and Dr. William Enders, Saturdays, from 10 a.m. to 1 p.m. (837).

Dr. Berna Blom, a dermatologist, holds a clinic at the facility for 3 hours every two weeks (837). Dr. Yves LeBrun, a neurologist, holds a neurology clinic every three

* The population of Bedford Hills is approximately 380. This means that each inmate could see the gynecologist approximately once every eight weeks or at least six times each year.

to four weeks at the facility for approximately 3 hours (838). Dr. Gerald Jacobs, the podiatrist, comes to the facility each month for 3 hours (837), and Drs. Wexler and Adams, the optometrists, alternate at the facility one day each week (837).

The X-ray technician comes in once a week and does chest X-rays on up to 25 residents (839).

The laboratory technician started to work at Bedford Hills in December, 1973 (1841). She is at the facility Monday through Friday, 8 a.m. to 4 p.m. (1842).

The pharmacist comes in Monday through Friday, 4 hours per day (828). She started in October, 1974 (1431). Prior to that time the nurses did the dispensing (1427). Plaintiffs' expert, Dr. Della Penna testified that this was adequate (659).

The ten registered nurses* at Bedford Hills staff the hospital building and satellite clinic around the clock,

* Two of these positions are borrowed from the Taconic Correctional Facility across the road from Bedford Hills. The budget request for 1976-77 has requested two additional nurse positions at Bedford Hills.

seven days a week.* There are four nurses on during the day shift (generally 8 a.m. to 4 p.m.), Monday through Friday.** Ms. Daly tries to keep two nurses on all other shifts except for the night shift. There are two nurses, who between them staff the night shift, seven days a week from 12 midnight to 8 a.m. (798-803).***

This pattern of staffing at Bedford Hills was established by the Department of Correctional Services through its Assistant Commissioner for Medical Services, Dr. Ian Loudon, as part of the Department's goal to constantly upgrade and improve medical services at the various correctional facilities throughout the state (1290).**** Dr. Loudon commissioned an

* Exceptions do occasionally occur on a shift because of illness or a temporary vacancy.

** One of these day nurses staffs the satellite clinic and starts at 6:30 a.m. and works to 2:30 p.m.

***Laurel Rans, one of plaintiffs' experts alleged she had only two to three nurses at her facility but "not necessarily all at one time". There was no night nurse coverage (897-898). There was no facility health services director and it appears that a physician came to the premises two half days a week since he saw only 13 to 15 women at this time (941).

****In furtherance of this goal, the Department is developing a Policies, Procedures and Guidelines Manual which contains among other things, protocols for the treatment of tuberculosis and syphilis (Exhibit "DD", 1290, 1294).

audit by the Joint Commission on Accreditation of Hospitals (JCAH) in order to obtain their recommendations and make, among other things, medical staff changes at Bedford Hills although their standards were not exactly appropriate for an ambulatory care facility (1297).^{*} Pursuant to the suggestions of the JCAH, report dated October 18, 1973 (Exh. "127") a part time pharmacist was hired for Bedford Hills, the nursing staff was expanded and additional physician hours were added.

By the end of October, 1974, the regular medical staff at Bedford Hills consisted of Dr. Williams, Dr. Saadat and Dr. Zorka Bekerus who did general practice at the institution 5 days a week, approximately three hours a day (Exhibit "76d"). This was virtually the identical staffing at Bedford Hills in January, 1976, when this case went to trial, with the exception of three additional hours provided

^{*} Dr. Frost also testified that the problem oriented medical record will be used shortly at Bedford Hills in conjunction with the University of Rochester (1299). A training program, at the time of trial, was about to begin for residents who will be employed as nurses' aid and laboratory assistant type jobs (1300).

by Dr. Enders on Saturdays beginning in December, 1974 (Exhibit "76d"). Dr. Bekerus, who replaced Dr. Tschorn, has simply been replaced by three other physicians, Dr. Poon, Dr. Ogwo and Dr. David.*

Dr. Della Penna testified that physician staffing at Bedford Hills was adequate (659).

Similarly by September, 1974, over one month before this lawsuit was initiated, there were nine full time nurse items at Bedford Hills, two items having been detailed from

* Even prior to October, 1974, Bedford Hills was staffed by a Facility Health Services Director, or his equivalent and another physician, Dr. Tschorn who attended the facility every day for one and a half to two hours (1434). Dr. Kones was the Facilities Health Director at Bedford Hills for one year, preceding Dr. Williams. Dr. Kones spent from two to four hours at the facility, five days a week (1433). He resigned in June, 1974. Prior to Dr. Kones, Dr. Leonard Schoenberger was the Facility Services Director. Between Dr. Kones' resignation and Dr. Williams' appointment, Dr. Enders, currently working at the facility, and Dr. Yu substituted for the Facility Health Services Director (1301) although plaintiffs' memorandum implies that there was no coverage during this period (p. 21). Similarly, when Dr. Williams was ill in April, 1975, Dr. Ogwo, now working on a fee for services basis at the facility, filled in for him (1305).

the Taconic Correctional Facility (1423).*

Intake Procedures

Each inmate received at Bedford Hills receives a complete health appraisal which consists of (1) a history and nurse screening (2) comprehensive testing and chest X-ray and (3) a physical and gynecological examination (Exhibit "E").

The medical department is informed of a new arrival by a phone call from the administration building (1919). Admissions usually arrive week days and reach the clinic anywhere from between 1 p.m. and 4 p.m. (1930). Her name is noted in the admission book, a medical folder is prepared and her name is entered in the master card system. The master card system is an index file which provides for periodic repeats of pap tests, X-rays, Wassermans and physical examinations (1921). This card is kept alphabetically by month and year so that the medical department may go to this

* Laurel Rans testified that she did not have evening coverage at her institution. Similarly, Dr. Weisbuch admitted that not all his institutions have twenty four hour coverage (584).

index each month and see what examination and testing is due (1923-1924).

Virtually the first person a new resident meets at Bedford Hills is one of the registered nurses. Within a couple of hours of her receipt at the institution, she is brought to the medical department (842). The first thing the nurse does is to take her history (845). If her history includes any prior medical treatment, she is asked to fill out forms giving her consent to the release of such information to Bedford Hills.

These records will be sent for and included in her medical file at Bedford Hills (845, 1262, 1103).

The inmate is also questioned as to any particular current problems (847). If an inmate has a current problem, she is brought to the immediate attention of the Bedford Hills Physician. A local examination is done at that time as well as a quick physical which includes the hearts and lungs (1537-1539). However, the institution's physical examination form is not filled out at this time (1539). This awaits a more thorough scheduled examination appointment.

If an inmate is received with a chronic problem, the Bedford Hills physician is also immediately notified. If he is not on the grounds, this is done by telephone (1920).

In addition to ascertaining any current or chronic problems, the nurse tries to ascertain if the inmate has been exposed to any contagious diseases (847). She looks for rashes, scars or any other visible signs of medical problems (862). The nurse takes her temperature, blood pressure and pulse rate. The nurse also does a pelvic and rectal examination, and takes a smear for a gonorrhea culture (850, 1443). She gets a diptheria tetanus toxoid innoculation and a clean catch urine is obtained for routine analysis. If an inmate is a diabetic, the insulin she is on is immediately checked. Emergency fasting blood work is ordered and a fractional urine (849). She is put on a special diet (849). If a resident is a hypertensive or over forty, the nurse, in consultation with the physician, will schedule an EKG (863). If a resident is an epileptic, a skull series, brain scan, EEG and a neurological consult are scheduled (863-864, 1545). The resident is also scheduled for fasting laboratory work - a Wasserman, an SMA12, sickle cell index (858-861). When indicated, the doctor is consulted for additional tests (862).

The laboratory technician schedules these tests as soon as possible, usually within a day, never more than a week or two (1844).

A physical and gynecological examination are scheduled as soon as possible (864, 1536). A chest X-ray is usually done up within one week of admission (865). Defendants schedule chest X-rays for all residents and not just when there are specific symptoms which indicate such a diagnostic test. An X-ray technician comes to the institution one day a week for this purpose. An appointment is also made for an inmate with the optometrist (1149-1150).

To familiarize inmates with the medical department, Ms. Johnson, one of the registered nurses runs an orientation program for new arrivals. This is to assure that inmates know how to obtain medical assistance (Exhibit "H", 870-877).

A new admission is put in her own room for forty-eight hours. After that she mingles with the other new arrivals. At the end of three weeks, she moves into general population (886). Prior to that time, a work classification category, will have been established for each new inmate by the Facility Health Services Director (1168).

Job assignment fall into four categories (1) any type of work (2) usually epileptics (3) cardiacs (4) no work, maybe school (1167-1168). As a practical matter if the admission physical has not yet been scheduled, anyone with special problems will have been picked up by a nurse and seen by a doctor. The nurse will check with that doctor for his opinion. This is then discussed with Doctor Williams (1170).* A classification is always subject to change (1170).

In their goal of improving the delivery of medical services, a never ending goal, defendants have been regularly shortening the interval of time between the admission date of a resident and her physical examination date. Between October 16, 1975 and January 9, 1976, out of 57 consecutive admissions, 53 had received their general physical and 48 their gynecological exam within 9 days after admission (Exhibit "FF").

Health Services on the Residence Corridors

If a resident does not feel well but does not feel in need of the services of a registered nurse or physician, medications, aspirin, tylenol, cremillin, mylanta and kaopectate are available from the corrections officers on the corridors (876). She is also entitled to two days room rest a month (1916).

The Lobby Clinics

If an inmate desires the services of a doctor or nurse, she attends a lobby satellite clinic operated twice a day in the center residence hall, No. 113.*

The lobby clinic is held twice a day, seven days a week from approximately 7 a.m. to 8 a.m. and from 7 p.m. to 8 p.m. When the nurse is ready, the officer in lobby 113 calls the women down, one corridor at a time (1925).

* There are other ways an inmate can contact a medical staff member. The officer at the area where the inmate will either be sent to the medical department or a member of the staff will come to her (956, 1933, 983-984).

Any inmate in general population on the upper campus has access to the registered nurse twice a day. There are no restrictions on the number of women seen in the clinic and a resident may go to the clinic as often as she likes. It is run on a first come, first serve basis (874-875). The work of the nurse at the lobby clinic is two fold: to give out previously prescribed medication which cannot be given out in bulk form and provide medical treatment where possible pursuant to standing orders (Exhibit "69") or refer residents to physicians when necessary (1324, 1925). Medications for colds, menstrual cramps, etc., are kept on hand at the lobby clinic and are administered by the nurse (1925). Where medications not given in bulk are to be taken more than twice a day, the medication is picked up at the hospital building around 11 a.m. and 3 p.m. (1454).

If a woman cannot be quickly evaluated when it is her turn at the lobby clinic, she will be asked to step aside and wait for a further evaluation in the satellite clinic after medications have been distributed and are locked back

in the cabinet.* Pulse and temperature may be taken on the initial line (1929). If this is not sufficient to identify the source of a complaint, the women are then called into the room one by one. The lobby clinic has a solid door that may be closed for privacy (1929). Blood pressures, dressing changes, breast examinations are done in the clinic after the medication has been distributed (1929). Further screening may also take place at the ambulatory care clinic (959).

The standing orders used by the nurses were adopted and modified by Doctor Williams and were approved by Dr. Frost. (1318, 1379). The registered nurses at Bedford Hills are generally graduates of three year nursing schools with sufficient experience to enable them to function as nurse practitioners (1318, 1491). Screening at Bedford Hills is not a one shot process. The inmates regularly see the nurses in the lobby clinic (1315) and are told to come back if they do not feel better (1460).

* The number of medications now being given out were reduced from approximately 200 to 50 in September, 1975 when a new procedure went into effect wherein provided for the distribution of some medications in bulk. These medications are not distributed at the lobby clinic but are picked up at the hospital building in the late afternoon (Exhibit "J", 878, 953).

Three nurses staff the lobby clinic in the morning and two nurses rotate the evening shift (805). Ms. Daly never sends an inexperienced nurse to the lobby clinic (1453). These nurses maintain clinic notebooks which provide, in part, a running summary of the treatment provided at the clinic to particular inmates as well as reminders to the nurse so that appropriate follow-up appointments may be scheduled.*

The notations from the lobby books are transferred to the running progress notes of the residents (orange cards). If a resident does not pick up her prescribed medication at the lobby clinic, this will be noted on her chart at the end of the period for which the medication was prescribed. Although, the medical staff would like to have everything on the orange cards, this is not possible. The important things are charted (1931). If a resident insists on seeing a doctor, an opportunity will be made available although not right away (1316).

* Ms. Geser, who has ultimate responsibility for scheduling doctor's appointments visits the lobby regularly when she takes her turn at conducting the morning clinic and also sees the women regularly in the ambulatory care clinic. Moreover, for most of the clinics, the same book is utilized and kept chronologically (975, 1934). All books are available to any medical staff member since they are kept in the ambulatory care clinic.

If a resident does not pick up her prescribed medication at the lobby clinic, this will be noted on her chart at the end of the period for which the medication was prescribed. The bottles are labeled with the termination date, and if at the end of the period, the medication has not been consumed, the nurse on duty knows that the inmate has failed to call for her medication regularly. This is also true of the medications given in bulk (953). The women at Bedford Hills are adults. If they do wish to come down for their medication, that is up to them (951). The women on essential medication know this. They are told by the Doctor (952).*

The inmates in segregation and reception also see the nurse each day. The night nurse makes a.m. rounds in these units. Noon rounds are also made (966-970). The nurse can be seen by the woman as she passes down the corridors. If a woman is lying down, the officer goes in to check on the resident in the presence of the nurse (971).

* Dr. Williams further explained that the pharmacist keeps a drug profile on the residents (1662).

The nurse also visits segregation and quarantine at 4 p.m. if there are medications to be administered (976). Evening rounds are made between 8 and 9:30 p.m. (977). Of course, there are always officers on duty in these units. If there are any special problems, the nurse will go (978, 984).

Seeing the Doctor

If after her initial screening, the nurse determines that an inmate should see a physician, her name is entered in the medical book (Exhibit "L"). Mrs. Geser is responsible for arranging the doctor's appointments.* The current practice is to try to keep the resident seeing the same physician except for acute problems. The nurse on duty at the clinic will indicate the more acute problems. The medical chart may also be examined (1007). Each resident listed in the medical book is given the first available appointment with her doctor unless it is an emergency or acute problem (1932-1933).

* This book is kept in pencil. If a name is crossed out, the resident has been seen. They don't always record the date she has been seen but they try to (1933). The book is in pencil so if a name is entered twice it can be erased. If it is crossed out, it would look as if the woman had been seen (1940).

** Mrs. Geser explained that the Bedford Hills clinic does not give appointment slips as in an emergency, appointments could be cancelled (1939).

She then sees whatever doctor is in (1932-33). There are approximately 15 to 30 new requests to see a doctor each day (1935-1936).

A woman sees a general doctor before she sees a specialist (1932).* This does not apply to gynecological complaints (1932).

The women are notified of their appointment by their corridor officer (1935). The night nurse or clerk phones the lobby officer in 113 within a half-hour of the doctor's arrival (1935). She informs the corridor officers (1907-1908). Sometimes the night nurse calls the corridor officers directly (1016). They have found calling is the best way. By 6:30 a.m., the day officer is on and she orally informs the residents of their appointments (1017).

For example, Dr. David comes in on Monday. He sees around 18 women. The medical clerk will call the corridor officer in 113 lobby and the officer in duty will call the residents out of their assignments (1019). Dr. Williams usually sees patients in the early afternoon. The procedure is the same. Late afternoon, he does sick wing rounds (1024).

* This development is fairly recent. At one time a resident could see other specialists upon request (996).

The women in segregation and quarantine are not denied their right to see a doctor for conditions requiring necessary attention (968-969). They are brought over to the clinic under escort (1026).

The Procedures Followed
When an Inmate sees a Doctor

When a resident is brought in to see the doctor, as the doctor writes his orders, they are picked up by a medical clerk sitting directly across from the doctor. These orders are put into an appropriate book or box for follow-up, e.g., if it is a prescription, it goes into a file for the pharmacist. If it is an outside appointment, it goes into an outside appointment book. If it is for a future appointment with the same doctor, it goes into his appointment book for the return day (1028-1031).*

If an outside appointment** is required, the stenographer in Ms. Daly's office calls and makes the appointment (1044). If it is for a diagnostic test, the appointment will be

* Exhibit "T" is a statistical survey of the number of face-to-face encounters between a resident and physician at the facility from November 3, 1975 to January 3, 1976. The total number of encounters for this period was 1295.

** Exhibit "W" shows the number of outside appointments scheduled for the past 2 years, 9 months. 4/1/73 to 3/31/74-859; 4/1/74 to 3/31/75-930; 4/1/75 to 12/31/75-595.

automatically set up. For a consultation, the order is submitted to Dr. Williams by the medical clerk for his approval. This may be done daily or weekly (1714). Once the appointment is made, it goes on a large calendar. Each Friday, a list is prepared from the calendar of the women to go out the following week. This list is sent to the Superintendent's office and the car pool (1061-1062).

When the woman goes for the outside appointment an envelope goes with her. The reason for the appointment is explained to the consultant or clinic on a sheet of paper in that envelope. For example, if it is for an X-ray, the X-ray request is specified (1069-1071). A report is usually returned with the resident. It may be sent after her. If it is not, Ms. Daly calls for a report (1072-1073). This procedure has been followed for at least 10 years (1074).

If a laboratory test is ordered, the order is noted in a book which is picked up by the laboratory technician.* The laboratory technician schedules the residents and each day

* The laboratory technician is under the overall direction of the Facility Health Services Director.

tries to call twenty to twenty-five down (1843). As many as twenty-five tests are done on each girl called down. The laboratory technician take the blood specimens, routine urines, throat cultures, nose cultures, ear cultures and some wound cultures (1841). She does the routine urinalysis. The culture and sensitivity are sent out. The CBC's, sedimentation rate, and sickle cell tests are done at Bedford Hills. The remaining tests are sent to an outside laboratory (1843).

Some tests are done immediately when the doctor requests it (1846). If a doctor wants a test done by a certain date, he writes it down. Otherwise, she fits it into her normal schedule (1846-1847).

Women are notified by their corridor officer that they are to appear for a laboratory test. A list is prepared each night and sent to the different corridors (1907). Girls come down to the clinic lobby and are sent in one by one (1845-1846).

When the tests are completed or are returned by the outside laboratory, the laboratory technician reviews the findings and marks those tests outside the normal range. They are regularly brought to Dr. William's attention or, in his absence, Dr. Saadat's, or any other physician (1494). If a

particular doctor ordered the tests, it would normally be brought to his attention with the exception of diabetes or any test that shows a wide deviation from normal. It would then be brought to the attention of the physician who is present (1498-1499). If a test is normal, it is filed. If it is abnormal, the doctor may have her called down to be seen (1941).

Chest X-rays are taken at the institution one day each week. A list also goes up to the corridors the night before. They are read by Dr. Brown, a roentgenologist at Northern Westchester Hospital. The results are returned within about a week. If abnormal, they are shown to Dr. Williams. If there is a particularly significant finding, Dr. Brown will phone the institution. X-rays have been taken the twenty years Ms. Daly has been at the institution (1105-1106, 1500-1501).

Although the physicians, laboratory technicians and X-ray technicians are prepared to perform their respective functions, frequently, the residents of Bedford Hills fail to appear for scheduled appointments. As Dr. Williams explained, upon his arrival at Bedford Hills, he became aware that women were not appearing for X-rays and laboratory tests (1502).

They also do not come for doctor's appointments (1516). Some claim they are not notified but a review of many charts indicated that others from their corridor appeared (1524). Various solutions were tried. Notices were posted in locked cases. The laboratory physician was informed to call and keep a list of the officers to whom she spoke (1504-1505). She was finally told to try on 3 separate occasions to get them down and then not to schedule them any further (1508). Dr. Williams met with the inmate liaison committee on several occasions to try to improve participation (1511-1513).

Mrs. Geser testified that the women do not always appear when called for physician's appointments. They try to call a second time. On other occasions, women are called down to the clinic but refuse to wait their turn to see the doctor and leave. These women may not be given another appointment since they have been called unless the nurse feels that they really should be seen. If an inmate does not appear or refuses to wait, usually no notation is made of this fact. (1939-1940)

Women are given passes by their corridor corrections officers. Some refuse the pass. Others take it but the

Corrections Officer does not call the medical department to see if the resident has kept her appointment (1909-1910).

The laboratory technician also stated that she cannot always record a failure to appear on the chart. "There is a lot" who don't come. She remembered Jennifer Jones in particular. Dr. Saadat had ordered blood work for Ms. Jones but she failed to appear. Ms. Vagianos saw her on campus, and Ms. Jones informed her that "She didn't think she would like to have it done". (1849a-1855). If Ms. Vagianos sees a woman on campus who has not come, she tells them to come the next day whether on the list or not (1858).

Sick Wing

The residents in sick wing have, among other things, elevated temperatures, are epileptics who have had seizures, diabetics out of control, patients who need bed rest (1546). Women in sick wing are strictly ambulatory. This means they are up and around or in a wheel chair. If they are not in this condition and they are in sick wing, inmates who have volunteered to be nurses' aides are assigned to them (1133-34). The nurses generally makes four rounds in sick wing - in the early morning, around noontime, mid-afternoon (if there is medication to be administered) and in the

evening (814-817). In addition, Dr. Williams makes rounds in sick wing, usually around 2 or 3 p.m. This a fifth round of sick wing (1124).*

The sick wing rooms are not locked.* The rooms are situated on either side of the corridors of Hospital 1 and 2. At the end of this corridor is a mesh screen door. An officer is always stationed outside this door, just across a small lobby. (780-783-, 791-792).

The corrections officers make rounds of sick wing every thirty minutes (1822-23). If an inmate is considered sicker than usual, the rounds are made more frequently, every fifteen minutes. The officer walks down each corridor. At night, a flashlight is used for checking the rooms. The switchboard is to be called every half hour (1824-1826).

All correction officers receive first aid training - eight hours of mouth-to-mouth resuscitation, what to do for seizures, wounds, strokes etc., the usual training for a first aid instructor (1833).

* The general exception to this is that a woman brought over from the segregation to sick wing is confined in a room in Hospital 1 usually reserved for mental hygiene. These rooms have toilet facilities (1129-1130).

Dr. Williams has had no problems with the physical set up of the sick wing. He knows of no condition that has suffered since he has been there because of any delay in calling for help (1546). The sick wing is not a hospital. If an inmate is in need of hospitalization, services are purchased on the outside (1297).

Emergency Equipment

Bedford Hills is equipped to deal with emergencies. There are stretchers on campus and a station wagon is set up to carry the stretcher. There are two resuscitators, suction machines, and heart stimulators. The nurses as well as the corrections officers are trained in first aid. An emergency kit is kept in the ambulatory care facility to take up to the corridors. The syringes are to be filled immediately prior to use (1140-1142).

A nurse may call an ambulance in an emergency. She does not need a doctor's permission. Northern Westchester Hospital is only five miles away (1143, 1148).

Other Services at
Bedford Hills

stic surgery is done at the Fishkill Correctional Facility r local anesthesia. This is centrally regulated through Albany since Fishkill services the whole state. The names of the inmates requesting plastic surgery are sent to Albany. If a resident is not chosen, her name is repeated each month along with any new names (1157-1159).

Elective surgery is requested through the Facilities Health Service Director. Dr. Frost must concur. It is done any place where surgery is done. This is non-emergent surgery (1160-1161). If a resident can be temporarily released without a guard, it can be scheduled more easily. Otherwise an attempt is made to cluster several inmates. It costs two hundred dollars to provide round the clock Corrections Officers (1319-1322).

This does not apply to emergencies (1322).

An eye mobile unit from the Albany medical center visits Bedford Hills every six months. It stays about a week

and sees 96 residents. It checks their eyes and refers them to an opthamologist or an optometrist. If a woman wants her eyes checked by the eye mobile unit or at any other times by Drs. Adams and Wexler, she requests it. The State supplies free eyeglasses. The wait is three weeks. If a woman wants to purchase her own, the wait is two weeks (1153-1156).

Bedford Hills purchases special orthopedic shoes for residents of the institution in need of such special shoes. A salesman from a store in Mt. Kisco comes to Bedford Hills to fit the shoes (1163).

The Medical Staff Budget

For the fiscal year, April 1, 1973 - March 31, 1974, the total amount spent on medical services for the Bedford Hills residents was approximately \$360,000, for April 1, 1974 to March 31, 1975, approximately \$392,000, for April 1, 1975 through November 28, 1975, approximately \$230,000. The figures through November only reflect bills actually paid and do not include bills not received or not yet processed for payment (1838-1840).

Opinion Below

The District Court stated that the standard for determining whether there has been an unconstitutional denial of medical care is whether there has been deliberate indifference to a prisoner's serious illness or injury. Estelle v. Gamble 429 U.S. 97, (1976). The Court concluded that there are generally two categories: 1) delayed access to a physician for diagnosis and treatment of a physical condition, which although not life threatening or likely to result in permanent disability, causes discomfort and 2) failure to provide treatment prescribed by a physician. The Court observed that, at bar, the question posed was at what point do individual failures in the overall operations of a prison medical care system add up to deliberate indifference which would render the entire system unconstitutional.

Citing Bishop v. Stoneman, 508 F 2d 1224, 1226 (2d Cir. 1974), the Court concluded that a series of incidents closely related in time may disclose a pattern of conduct amounting to deliberate indifference to the medical needs of prisoners or "medical facilities so wholly inadequate for the prison population's needs that suffering would be inevitable." In the Court's opinion, a prison health care service was required

to provide the full gamut of health care services, from treatment for minor routine instances of illness to more esoteric specialty care.

The Court reviewed the health care facilities and staff at the Bedford Hills Correctional Facility, a medium security facility of approximately 380 women inmates. The health services of Bedford Hills are located principally in the "hospital" building. Although known as such, it is not certified as a general hospital and defendants do not use it as such. The building contains a main ambulatory care clinic and an infirmary known as "sick wing". The medical staff at the time of trial consisted of eight nurses, the nurse administrator, one full time physician, one part time gynecologist, a laboratory technician, a part time pharmacist and a part time x-ray technician. There is also a medical clerk and stenographer. The staff is supplemented by consultants and outside hospital facilities.

The nursing staff at Bedford Hill is the crucial link in the chain of health care delivery at Bedford Hills. Nurses run the lobby clinic, prepare physician appointment schedules, conduct rounds of reception, segregation, and the

hospital building and assist during all physical examinations. In addition, among other things, nurses conduct the initial interview and screening of new admissions at Bedford Hills.

Ms. Daly testified that to perform the nurses duties, she required, at a minimum, two nurses in the day shift (8 a.m. to 4 p.m.), two on the evening shift (4 p.m. to midnight) and one on the night shift (midnight to 8 a.m.). She testified that barring complications she could do this with eight nurses. However, illnesses, vacations and the like interfere. The Court stated it was apparent that eight nurses could not provide continuous medical coverage seven days a week. Dr. Frost recognized sufficient nursing staff was crucial. Dr. Williams testified he was operating with a skeletal staff.

Physician services varied widely in the approximately two and one half years examined in the lawsuit. At the time of trial, Dr. Williams was the Health Services Director, spending 5 to 6 hours a day, five days a week at the facility. Dr. Saadat served as a part time physician on the regular staff of the institution providing gynecological services two hours per day, five days per week. Dr. Williams and Dr. Saadat

alternate weekends on call. This staff was augmented by four physicians on a consultant basis, totaling six days a week, three hours a day. In addition speciality clinics are held at the facility in dermatology, neurology, podiatry and optometry. Bedford Hills also uses the services of outside consultants and local hospitals when needed.

The Court stated it is necessary to inquire whether the physician staffing, which is adequate, is being used to maximum advantage. In short, it is necessary to examine how various components of the medical care delivery system interact with each other and with correctional regulations so as to either afford or deny the physician services.

The court turned to this appraisal and considered the following contentions raised by plaintiffs:

- 1) admission health screening, including X-ray reports is substantially delayed, and the admission screening relies on dangerous equipment (antiquated x-ray machine) and techniques (catheterization)
- 2) access to primary care physicians is denied or delayed because of lobby clinic procedures for screening and record keeping
- 3) sick wing facilities are inadequate
- 4) there are delays or failures to do diagnostic work ordered by a physician
- 5) there are delays in reporting test results
- 6) abnormal test results not followed up in a timely fashion,

7) follow up medical appointments are not kept or scheduled with Bedford Hills physician 8) the chronically ill are not adequately monitored 9) inappropriate work assignments are made 10) access to outside specialists is denied or delayed for treatment and for elective surgery consultations.

The court rejected plaintiffs' claims that an admission health examination is constitutionally required, that there were delays in test reporting, that the chronically^{ill} are inadequately monitored, that work assignments were inappropriate, and that access to outside specialists and consultants for consultation and elective surgery were denied or delayed.

The court did find that the x-ray machine was antiquated, that the lobby procedures were inadequate as a means for inmates to gain access to a primary care physician, that sick wing was inadequate, that ordered diagnostic work was not done or delayed, that abnormal results were not followed up in a timely fashion, and that follow up medical appointments were not kept or scheduled.

Examining sick wing, the Court observed that it contains approximately nineteen rooms and is used to house patients who have elevated temperature or blood pressure, have had epileptic seizures within the previous twenty-four hours, have been returned from hospitalization, and any other patient who in the judgment of the medical staff is incapacitated in some way and requires bed rest and

closer observation. Nurses make rounds of sick wing at least twice a day, morning and evening. There is also a mid day round and when necessary, a nurse dispenses medication in sick wing in the late afternoon. Dr. Williams tries to conduct regular sick wing rounds. Corrections officers are instructed to make rounds of the sick wing every half hour. When sick wing houses a patient who is in need of closer observation, rounds are to be made every fifteen minutes. A correctionsofficer is stationed on each floor of sick wing. The station is across a lobby from the patient corridors. There are no call buttons in the patients rooms. Citing two questionable incidents over a two and one half year period, the Court concluded that plaintiffs had proved by the overwhelming weight of the evidence that there is a serious lack of communication and medical observation in sick wing.

The Court found that plaintiffs proved that the lobby clinic procedure is responsible for the principal deficiency in the Bedford Hills medical system, substantially delayed or denied access to a physician for diagnosis and treatment of significant illnesses. The Court cited certain inmate charts for instances of delays in obtaining access to a physician. The Court stated the same result, however, could be reached by an analysis of the lobby clinic

operating procedures, the facilities of the room used for screening and the record keeping methods. The Court held that screening in these circumstances is a failure to screen, leading to denied or delayed access to a physician.

The Court held that laboratory tests are not always done because of poor record keeping whereby the laboratory technician is not informed of the order and inmates are not notified of scheduled work. For similar reasons, abnormal results are not followed up with treatment and appointments with Bedford Hills physicians are not scheduled. The Court saw this as a problem of not giving advance notice of laboratory or physicians appointments. The Court viewed the system as having a built in guarantee of repeated oversights as surpassing negligence and as recklessly inadequate.

In conclusion, the Court stated it was not unfavorably impressed with the individual member of the Bedford Hills medical staff. The Court agreed that there are fine dedicated doctors employed, that outside specialists are available, that there is a system of referral to nearby hospitals and that adequate medical care is often provided at Bedford Hills. The Court stated, nonetheless, that administrative and record keeping procedures at Bedford Hills are inadequate

and ordered that a report be submitted to the Court on new means and procedures for providing better access to medical providers in sick wing, sick call that provides adequate nurse screening and reasonably prompt access to a physician, procedures that insure that ordered laboratory work is reported and followed up and medical reappointments are scheduled, and a system for providing for self audits of the medical care delivery system and record keeping procedures conducive to such audits. On July 11, 1977 the court entered judgment. This judgment is reproduced in full in the appendix.

POINT I

THE INMATES OF THE BEDFORD
HILLS CORRECTIONAL FACILITY HAVE
AVAILABLE TO THEM A COMPREHENSIVE
MEDICAL PROGRAM RESPONSIVE TO THEIR
MEDICAL NEEDS AND THE DISTRICT COURT
ERRONEOUSLY CONCLUDED THAT CERTAIN
ASPECTS OF THAT PROGRAM DID NOT
MEET FEDERAL CONSTITUTIONAL STANDARDS

Although rejecting some of plaintiffs claims, the District Court concluded that the medical program at the Bedford Hills Correctional Facility fell short of constitutional standards in the following respects: an antiquated and dangerous x-ray machine was used at the facility, access to primary care physicians was denied or delayed because of lobby clinic screening and record keeping procedures, sick wing facilities were inadequate, diagnostic work ordered by a physician was not done or delayed, abnormal

test results were not followed up in a timely fashion and follow up physician appointments with Bedford Hills staff physicians were not kept or not scheduled. However, in so concluding, the District Court erred. It applied an improper legal standard in assessing the adequacy of the care, rendered an opinion based on sheer speculation and made erroneous factual findings which were unsupported by the evidence.

Although the District Court cited the applicable cases, the Court, in analyzing the evidence, did not apply the constitutional standard set forth by the United States Supreme Court in Estelle v. Gamble, 429 U.S. 97 (1976):

"We therefore, conclude that deliberate indifference to serious medical needs of prisoners constitutes the necessary and wanton infliction of pain. . . proscribed by the Eighth amendment. Estelle v. Gamble, supra, 104."

(emphasis supplied)

Instead of applying the standard that plaintiffs must meet, deliberate indifference to serious needs, as the opinion reveals, the District Court analyzed the trial record from an optimun standpoint. Accordingly, notwithstanding that there are approximately three hundred and eighty inmates at Bedford Hills at

any given time and that on the average 22 women are admitted to Bedford Hill each month so that, in any given year, approximately 625 women are at the institution, the District Court fastened upon three or four instances of types of delays to conclude that certain aspects of the medical care system at Bedford Hills were inadequate.

The Supreme Court in Gamble made clear that the Constitution does not require a perfect medical system. Even prior to Gamble, this Court recognized that there was no such constitutional requirement and that the State has fulfilled its obligation if it has provided a program which is reasonably suited to meet the needs of the resident population so that human suffering is not inevitable. The Constitution does not require that there will be no suffering at all; nor does it bar an occasional lapse. Bishop v. Stoneman, 508 F. 2d 12, 25 (2d Cir. 1974).

The Court states that plaintiffs had proven by the overwhelming weight of evidence that there is a serious lack of communication and medical observation in sick wing. However, this overwhelming evidence apparently consisted of one incident in 1974 where Roseanna Vega fell off a toilet and with the relation of some incident by plaintiffs' experts that they testified they observed during their visit to the facility in the presence

of counsel for defendants. As for the toilet incident, there is certainly no direct relation between Ms. Vega falling off the toilet and inadequate observation in sick wing. If Ms. Vega had not been an inmate, she would have returned to her own home where she would not have been attended by anyone. With regard to the testimony of plaintiffs' experts, they testified that a girl was left in a room in sick wing unattended. Although these experts were all physicians, none of them apparently regarded the women as in any serious distress as not one of them approached to offer any assistance. Moreover, anyone who has ever visited a hospital (and Bedford Hills maintains no hospital, just an infirmary area) knows that nurses do not observe patients 24 hours a day unless they are in special intensive care units for very seriously ill patients such as recent heart attack patients or patients who have undergone recent surgery and are in a recovery room.

Although a buzzer or bell system might be desireable, there is no evidence to establish that this is constitutionally necessary.* Corrections officers patrol sick wing every half

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*Since trial, the only infirmary area at Bedford Hills is on the first floor of the hospital building where the ambulatory clinic, staffed by the nurses, is stationed.

hour. If there is a patient in the sick wing who needs to be checked more often, they patrol every fifteen minutes. Nurses also make regular rounds of sick wing as well. At the end of the sick wing corridor is a mesh screen. This is left open except in very unusual circumstances. An officer is always stationed outside this door just across a small lobby. All corrections officers receive first aid training - eight hours of mouth to mouth resuscitation, what to do for seizures, wounds, strokes, etc., the usual training for a first aid instructor.

Dr. Williams has had no problems with the physical set up of the sick wing. He knows of no condition that has suffered since he has been there because of any delay in calling for help. The sick wing is not a hospital. If an inmate is in need of hospitalization, services are purchased on the outside.

As for the lobby clinic procedures, the Court erroneously found that plaintiffs had proved that it results in substantially delayed or denied access to a physician for diagnosis and treatment of significant illnesses, notwithstanding thousands of visits by the inmates to the lobby clinic each year.

The District Court relied on five instances where an inmate had to wait more than two or three weeks to see a physician to conclude that the lobby clinic procedures delay or deny access to a physician to such an extent as to render the system so wholly inadequate as to be a deprivation of plaintiffs' constitutional rights.

Paulette Blackstock suffered from Pelvic Inflammatory Disease. (Exh. 5 notes 5/3/75 and 4/9/75). She apparently complained of an infection in her tubes on July 19, 1974 and approximately three and one half weeks later, on August 14, 1974, saw Dr. Saadat, the gynecologist. Ms. Blackstock had a condition for which she was treated. It is a chronic condition with which she will have to live the rest of her life and, in fact, notwithstanding repeated visits to physicians at Bedford Hills, the final note on her medical chart indicates that she complained of a white vaginal discharge with itching (note of 9/22/75).

As for Paula Herbert, starting January 18, 1975 she complained of a nodule on her nose, a skin rash and shortness of breath. Later in January she was moved to the special housing unit. Since a nurse visits the special housing unit

each day to check on the inmates, the records indicate a daily request to see a physician. However, as observed by the nurse, it was apparently not an immediate problem since on January 28, 1975, the nurse notes that Ms. Herbert was not in distress, on February 2, 1975, that the nodule does not block nasal passages and on February 2, 1975 that Ms. Herbert stated she was fine. On February 14, 1975 she was seen by a physician. This again was not an emergency situation. Ms. Herbert was seen by Dr. Blom, the dermatologist, regularly from May 9, 1975 to November 21, 1975 and there is no mention of any problem with the nodule on her nose. (1630).

As for Yvonne Lee, she complained of pain on May 2, 1977. She saw a gynecologist on May 13, 1975. In fact Ms. Lee had a fistula which was very difficult to diagnose and for which she was eventually operated while at Bedford Hills. Her physical examination did not turn this up nor did many subsequent visits to physicians at Bedford Hills.

Theresa Durante first complained of a long period with a heavy flow on August 13, 1974. Although perhaps calling for some attention, the District Court treats this ailment, as it does with each, as if it were a major catastrophe.

On August 23, she saw a physician who referred her to a gynecologist. He did not indicate that the matter was an emergency. She was seen by another doctor on September 29 and Dr. Saadat, again on October 18, 1974.

As for Louise Johnson, the Court states that she complained about her eye at the lobby clinic on January 27, 1975. On February 4, 1975 her previously scheduled appointment with an outside ophthalmologist was moved up to February 10 from February 13. Presumably, the clinic at Grasslands was called and they did not regard her complaint as sufficient to require her immediate production. She was seen on February 10, 1975 and her eye required no treatment (Exh. 29 Grasslands Hospital Inter Agency referral sheet dated 2/19/75 and 2/10/75 [lower half]). This case particularly illustrates the District Court's inclination to treat every complaint as major calamity notwithstanding the judgment of the medical staff who were in a position to observe and speak with the inmate.

The Court speculates that in addition to these cases, there may be other instances of delay that plaintiffs did not set forth. In fact, plaintiffs had additional charts obtained through discovery that were never put into evidence.

In order to support its findings further, the Court claims that certain clinic procedures have unconstitutional effects. Here the Court delves into administrative matters, second-guessing the individuals who have to grapple with the problems day after day.

The Court states that the lobby clinic unconstitutionally combines medication dispensation with screening. However, in so concluding, the Court ignored the actual practice of the lobby clinic. In practice, if a woman could not be accommodated when it was her turn at the clinic because her complaint required further examination, she was asked to step aside and was called into the lobby clinic after the medication had been dispersed. Blood pressures, dressing changes, breast examinations were done at this time in the clinic. Further screening was also done at the ambulatory care facility where indicated. As plaintiffs' own expert, Dr. Della Penna, declared women must understand that there are certain things they have to do although inconvenient. At his institution, Rikers Island, residents on medication and in need of screening have to buck the lines twice. (663)

Although the Court concluded that the lobby clinic notebooks were inadequate, no one waited to see a physician where her condition truly warranted immediate attention, and, in point of fact, the clinic procedures worked. Ms. Daly never sent an inexperienced nurse to the clinic. The same three nurses staffed the lobby clinic in the morning and two nurses rotated the evening shift (805). They knew the inmates. These nurses maintained clinic notebooks which provided a summary of clinic encounters as well as reminders to the nurse so that appropriate follow appointments could be scheduled. Mrs. Geser, who had ultimate responsibility for scheduling doctors appointments, visited the lobby clinic regularly when she took her turn at conducting the morning clinic. She also saw the women regularly in the ambulatory care clinic.

For most of the clinics, the same book was utilized and kept chronologically. All books were available to any medical staff member since they are kept in the ambulatory care clinic. When necessary, the notations from the lobby books were transferred to the health record of the resident.

As for the Court's holding that ordered laboratory tests are not performed, again the Court points to four or five incidents to conclude that test procedures at Bedford Hills are in violation of constitutional standards. However, thousands and thousands of tests are done each year at Bedford Hills and the Court unwarrantedly concludes that a handful of delays in performing laboratory tests results in an unconstitutional system.

Moreover, the Court found no cases where serious illnesses were untreated because of any alleged testing delay or failure. Dr. Williams ordered a follow-up urine for Paulette Blackstock on May 21, 1975 for June 14, 1975. This test was not done. Dr. Williams saw her on May 29, 1975. He said she was asymptomatic. She was discharged from sick wing. As for a follow-up urine and sensitivity test for Rebecca Booker, the Court's opinion makes it appear that this order was completely ignored. In fact, there was simply a clerical mix up since a throat culture was also ordered for her on the same day and the laboratory technician did not pick up that both a throat and urine follow-up were to be scheduled. This is hardly constitutional error and, moreover, Ms. Booker had no further complaint.

The blood count on Paulette Blackstock was not done on the date ordered because through inadvertence, the order was not picked up. The point is that the test was done on September 27, 1975. The staff was not indifferent to Ms. Booker's needs.

Frances Chacon undoubtedly did not come for the blood count test that was ordered for her. She had a history of failing or refusing to appear (See notes of September 27, 1974, October 16, 1974, November 6, 1974, November 7, 1974, November 12, 1974). As for Patricia Narganes, the thyroid test ordered for her was negative.

The Court also points to a few instances of delayed responses to abnormal test results. Again there are many, many test results received at Bedford Hills and the Court fastens upon a few cases to reach its conclusions. Moreover, upon analysis, none of the discussed test results were related to serious medical problems that required immediate treatment.

There is nothing in the record to indicate that Dr. Tschorn did not review the liver test of Angie Vasquez. A subsequent liver test was normal. Dr. Williams stated at trial that he knew of no treatment indicated by the first liver test.

As for Ms. Reed, Dr. Williams did not indicate that she be scheduled to see him immediately for a follow up on her test results. He would have called her down sooner if he felt she required immediate attention. Geraldine Strong's anemia was no worse than that of many individuals walking the streets (1170-1171).

Follow up appointments with physicians are regularly scheduled. The few instances cited by the Court do not warrant its holding. Carmen Garcia was referred to a gynecologist by a general practitioner. In fact, Ms. Garcia was scheduled for an appointment on February 22, 1974. Since she was in segregation, the appointment was put off until March 18, 1974. (Exh. 77a). Her name was placed in the appointment book for Dr. Saadat for May 1 1974. She was seen instead on May 8, 1974. Again this was not an emergency situation. On August 2, 1974, she was seen by Dr. Saadat. He ordered her returned. She was seen by Dr. Tschorn on August 28, 1974. On January 16, 1975, she had no gynecological pathology.

According to the gynecologist appointment book, Minnie Wrenn was seen on September 27, 1974 (Ex. 77a). In September, 1975, Dr. Saadat ordered that she be sent to an outside consultant for her gynecological complaints. She was seen by a consultant, Dr. Berg, and she did not need a hysterectomy.

According to the gynecologist appointment book, Ms. Blackstock was scheduled for an appointment on September 26, 1974 and she did not appear. The Court's speculation that she was having tests is in error since the tests were done on September 27, 1974.

Aside from the fact that the Court only points to relatively minor instances of delay in the cases cited, in a systemic analysis, one would expect some error even in the best system. The Court cites no statistical data by which it is measuring the delivery of care at Bedford Hills. Without such data, the Court could not conclude that the medical services rendered at Bedford Hills were substantially different from medical services rendered by any clinic in this country.

The fact is that the medical program at Bedford Hills is a highly developed and comprehensive program well in excess of that required by constitutional standards. The responsiveness of the medical program at Bedford Hills is highlighted by the fact although plaintiffs filed this lawsuit in October 1974 and did not try it until January 1976, approximately 15 months later, plaintiffs submitted to the District Court the medical records of only 64 residents at

Bedford Hills out of a possible class of at least 700, or approximately 9%, notwithstanding that a notice of this lawsuit was posted at Bedford Hills and lawsuits such as these quickly travel the inmate grapevine.* Considering the length of plaintiffs' complaint, it is apparent that this lawsuit had its origins several months prior to October 1974, bringing the total of possible number of medical charts that counsel for the class could have received closer to 800.

Moreover, as we have stated, most of the delays alleged with regard to the 64 charts plaintiffs introduced into evidence related to relatively minor medical problems which were, in any event, unsubstantiated at trial. The medical charts of these plaintiffs run page after page and plaintiffs have chosen to fasten on a particular problem, ignoring the other valuable services rendered to each member of the plaintiff class. According to plaintiffs' experts (464, 928), the plaintiffs as a whole are individuals who have neglected their health, and the services they received at Bedford Hills are thus

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*On the average, 22 women are admitted to Bedford Hills each month (Exhibit "O", Exhibit "1" to Exhibit "64"). Accordingly, over a fifteen month period, approximately 330 women are admitted to Bedford Hills.

frequently in excess of what they would receive were they not convicted of a crime and incarcerated.

In Newman v. Alabama, 503 F. 2d 1320 (1974), the Court found a constitutional violation where, among other things, only two part time physicians, three registered nurses and one X-ray technician staffed a hospital which served as the receiving point, general hospital and diagnostic center for Alabama's entire prison population of close to 4,000 inmates. On weekends and nights, there was no nurse. Unsupervised inmates administered medication and treatment, took X-rays, and performed suturing and minor surgery on residents. The facility was unsanitary. These facts are a far cry from the case at bar.

Cases finding constitutional violations have fixed upon conduct so deliberate or so flagrant that Courts have held that if established, indifference to the needs of an inmate or inmates may be fairly implied. See, e.g., Bishop v. Stoneman, supra, (complaint alleged that a inmate had waited six months for an appointment with a physician, another inmate who lost thirty pounds in three weeks went untreated; a third inmate vomited blood for three days before seeing a

doctor, a fourth with severe stomach pains was denied access to a doctor for what was a gangrenous appendix, and a final inmate went untreated for malaria until his attorney intervened); Williams v. Vincent, 508 F. 2d 541 (1974) (stump of inmate's ear stitched, no attempt to replace severed portion which was thrown away, after which he was placed unattended in solitary).

At bar, plaintiffs have utterly failed to establish such indifference by the medical staff at Bedford Hills. Dr. Williams showed himself to be a particularly concerned individual. For example, with respect to the eye condition of Phyllis Hapeman, instead of leaving her treatment to a single ophthalmologist (who had come to his office on his day off at Dr. Williams' request), after her return to the institution from this appointment, Dr. Williams was on the phone to Columbia Presbyterian Hospital to arrange for further consultation at their Eye Institute.

As for any potential cancer patients, he attempted to get Memorial Hospital in New York City to accept them. When thwarted, he was able to get Grasslands Hospitals with a specialty clinic in gynecology to accept Bedford Hills women.

He introduced a program for diabetic patients to improve their familiarity with the disease so that they would be self-sufficient when they left the institution. He does periodic chart reviews of the troublesome cases and makes every effort to see that patients with lingering problems are appropriately treated.

Finally Mrs. Warne, former superintendent of Bedford Hills, repeatedly stayed on top of the medical staff to maintain services of the highest quality. Dr. Frost also performs this same function and testified that he follows-up all complaints he receives from inmates. Dr. Saadat, Ms. Daly, Mrs. Geser and other staff members also showed themselves, to be concerned about the residents' welfare.

During the past several years, the medical budget for Bedford Hills has been in the \$350,000 to \$400,000 range. Working with this budget, defendants have attempted to maximize the services available to the inmates at Bedford Hills. The District Court's opinion while on the one hand, stating that there are insufficient nurses at Bedford Hills, on the other hand, criticizes the staff for less than a perfect medical system. Paradoxically, the Court finds defendants guilty of being

indifferent to the medical needs of the inmates of Bedford Hills without making the necessary finding that they could do more with the staff and budget appropriated by the state legislature. This is unfair and the Court has merely succeeded in impugning the integrity of state employees who have no control over the staff items created by the Legislature.

Even if the Court could have concluded that the medical services at Bedford Hills were not constitutionally adequate, without proof that more could be accomplished with the existing staff, the Court could not find defendants guilty of unconstitutional conduct. Clair v. Anderson, 387 F. Supp. 404 (D.C. Okl. 1974).

In sum, the Court overreached in finding defendants responsible for a constitutionally inadequate medical program at Bedford Hills, and moreover, came to this conclusion based on optimum standards, totally inappropriate at bar.

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POINT II

THE JUDGMENT OF THE DISTRICT COURT
IS CONTRARY TO THE PROOF AT TRIAL,
GOES BEYOND THE COURT'S OWN FINDINGS
AND IS AN UNWARRANTED INTERFERENCE
WITH THE ADMINISTRATION OF THE
MEDICAL PROGRAM AT BEDFORD HILLS

The District Court judgment, like its opinion, is contrary to the proof at trial and inconsistent with the applicable legal standard that in order to have a constitutional violation, the medical program at a correctional facility must be indifferent to serious medical needs. Insofar as in the declaratory aspects of the judgment are concerned, Parts II, III, and IV of the judgment should be struck as unsupported by the evidence in light of the applicable legal standard.

As for the injunctive provisions of the judgment, since plaintiffs failed to make out a constitutional claim, these parts of the judgment should also be reversed.

Moreover for the reasons discussed infra, defendants object to the following parts of ^{the} injunctive provisions of the judgment:

Part I (C) states that defendants must provide plaintiffs with a copy of all inspection reports concerning x-ray machines at Bedford Hills for three years following

entry of the judgment. This paragraph is objectionable for the reason that it applies to all x-ray machines at Bedford Hills when the only machine in dispute at trial was the machine used for chest x-rays. There is also a machine used for dental x-rays at Bedford Hills. The provision merely places an unnecessary administrative burden on already overworked personnel.

The provisions of Part II of the judgment relating to sick wing are unreasonable. Part II(A) requires that when an inmate is locked in her room, a physician must review a nurse's determination within 12 hours. It additionally provides that when a door is locked, a health staff member must personally observe the inmate every half hour and a corrections officer shall check on the inmate every ten minutes. The Court has ignored the fact that women must be locked in if infectious or disturbing others.

Moreover, a women may be placed in sick wing for relatively minor reasons such as the need to take sitz baths and there is no need that ~~this~~ type of resident be observed every half hour

by a health staff member or every ten minutes by a corrections officer where an officer makes rounds every half hour anyway and every fifteen minutes when such frequent observation is required. This type of rigid inflexible procedure is simply a waste of valuable staff time. The type of observation that is necessary must be left to the clinical judgment of the medical staff.*

As for Part II(B), the solid door of sick wing is left open except on rare occasions. There was no showing that this door interfered with procedures in sick wing, it is usually left ajar and the order that it be removed is well beyond constitutional dictates.

Defendants take grave exception to Part II (C). It would require new construction at Bedford Hills and a complete physical change in the medical building since there are no rooms adjacent to the sick wing that can be utilized in this way.** In short, the Court is ordering that the entire

* Moreover, since the Court in Part II(D), orders a buzzer or bell system, these provisions seem particularly unnecessary.

** At the current time, defendants are using only the first floor of the hospital building as the sick wing.

ambulatory care clinic be moved to another part of the building. There was never any showing at trial that all necessary emergency equipment, medication and supplies are unavailable to nurses. As for the provision that the nurses be authorized to call for an ambulance or other immediate transportation, defendants are at a loss as to this directive since nurses may call for ambulances or transportation when they deem it necessary and there was never any evidence to the contrary at trial.

It is not necessary that the ambulatory clinic be adjacent to the sick wing. The nurse is stationed right in the building which is also staffed by corrections guards trained in first aid. There may be one inmate in sick wing with nothing more than a common cold and yet a nurse would have to observe her every two hours, from 4 p.m. to 8 a.m.; this is ludicrous. Moreover, during nighttime hours, there is only one nurse on the Bedford Hills grounds. She may have to go to other parts of the facility to attend to emergency situations. It would be impossible to staff this station from 4 p.m. to 8 a.m. without additional nursing staff.

Part II(D) requires a functioning mechanical buzzer or bell call system. Although desirable, defendants do not

believe this is a priority item. Defendants work within a limited budget. The women in sick wing are not that ill. The corridor is regularly patrolled by corrections officers. This requirement is simply not constitutionally mandated. Further, the Court has limited its judgment to a buzzer or bell system excluding a light call system. Moreover, the terminal of this system may only be observed by a corrections officer if the nurse is called away. There is no constitutional authority for these limitations.

As for Parts II(E) and (F), the medical staff cannot meet these requirements without additional physician staff. The staff physicians at Bedford Hills work Monday to Friday. There is no physician to make rounds on Saturday. Although a doctor is there generally to see patients for pre-arranged appointments and emergencies, he can not also make rounds.

Moreover there is no need for rounds this often. Nurses make rounds at least twice a day, including Saturdays and Sundays and up to four times a day. Physicians do not even see their patients who are in hospitals every day. The sick wing at Bedford Hills is just an infirmary area. Someone may have no more than a cold or slight virus. As for the requirement of a note everytime the physician makes rounds, the

physician may say no more than "Hello". Surely such an encounter does not require a note.

Paragraphs II (E) and (F), moreover, are counter to all procedures at Bedford Hills since rounds are not necessarily made in sick wing itself. If a patient is ambulatory, she is brought to the ambulatory care facility to see the physician. If necessary, this encounter is noted on her chart. The judgment of the District Court requires that a separate detailed book must be kept of these encounters. Defendants submit that the Constitution embodies no such requirements.

Part III of the judgment interferes with the sick call/physician referral procedures at Bedford and the provisions are unreasonable. Part III B(1) provides that screening shall be performed at a place separate from where medication is administered. Defendants see no reason why the same facility cannot be used.

Part III B(2) is particularly egregious and defendants most strenuously object to the inclusion of this provision. The Court states that screening shall be performed by a licensed medical personnel with training equivalent to that of a registered nurse. However, there is absolutely no evidence

in the record sufficient to warrant this requirement. The statement that screening shall be conducted by licensed medical personnel with training at least equivalent to that of registered nurse is ambiguous and gratuitous since at Bedford Hills only licensed registered nurses do screening. However, there is nothing in the record to indicate that a physician's assistant or licensed practical nurse could not do screening.

But even more egregious, if possible, is the requirement that screening be done by registered nurses who have received special training in the techniques of medical screening and triage. Insofar as plaintiffs believed that job qualifications as established by the Civil Service Department are inappropriate, they should have sued that Department. There are no funds available to further train the employees at State expense out of the medical budget.

Part III B(3) ignores the fact that Dr. Williams established protocols for screening. These protocols are constitutionally sufficient.

Part III B(4) states that screening shall be available at the time of an inmate request for a doctors' examination or

at the very next lobby clinic if the request comes during the interval between clinics. Again, in view of the limited nursing staff, it is not always possible to do screening that quickly and there should be some discretion with the nurse to defer screening for a brief period.

Part III B(5) is totally unwarranted, since this has always been the policy at Bedford Hills.

The materials required by Part III B(6) have always been available and the types of supplies must be left to the judgment of the facilities health service director.

As for Part III B(7) in order to accomplish this on an ongoing basis, four licensed practical nurses would be necessary to dispense the medication. Moreover, some encounters are so insignificant as to hardly require a note.

Part III B(8) sets out an overly rigid standard. It is not always necessary that a woman be seen within two weeks. The nurse may believe it sufficient to tell the resident to come back in a week or two if her complaint continues. This section virtually removes all discretion from the health staff. It may not be necessary for a resident to see a physician at all. Inmates as a group tend to be manipulative. The health unit must have some authority to say how far the requests go.

If a nurse has no such authority, the nurse screening procedure will be undermined.

Particularly difficult is the requirement of appointment slips. The nurse cannot necessarily arrange at the time of screening for a definite appointment. Emergencies arise at the institution. One inmate may have to be moved ahead of another. A physician may have to cancel his appointments because of an outside emergency. Defendants are concerned that making an appointment that may be cancelled will lead to low morale. Moreover, inmates do not need this advance notice. They are always on the grounds.

As for the requirement of a detailed doctors appointment book, this will simply take up staff time. There is no one to keep such a book, the requirement is too rigid and is inappropriate.

Turning to Part IV of the judgment, again there is no need for laboratory appointment slips. There is no one to send them out since the laboratory technician is busy doing her real work. Part I (B) requires that all test results be shown to a physician ordering the test. There is no need for a physician to see a normal test.

As for notifying the inmate of normal tests, this is an elective procedure. It may be desirable but it is not constitutionally necessary where there is no staff to do so.

Parts IV (D) and (E) require that a physician see an inmate within 10 days to explain abnormal test results. However, it may be that a test falling outside a particular laboratory range is perfectly acceptable for that individual. This is a clinical judgment. The requirement for notifying the inmate in writing of a reappointment is not constitutionally required.

Part IV (F) requires a laboratory book. This again introduces unnecessary record-keeping which is not constitutionally required.

Part V sets forth certain audit requirements that are not constitutionally mandated. Moreover audits can be done on the records as maintained by the Department. Indeed, plaintiffs did an audit for this case. Insofar as the order provides for an outside audit, there are simply no funds to do this. These funds will have to be taken from other real services.

As for a distribution of the judgment to plaintiff class and defendants' employees, the judgment unreasonably sets no termination date for this distribution.

"[T]he problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform."
Procunier v. Martinez, 416 U.S. 396, 405 (1974).

Notwithstanding disclaimers to the contrary, the judgment of the District Court is an unwarranted attempt to interfere with the administration of the medical Program at Bedford Hills and should be struck down by this Court.

CONCLUSION

THE JUDGMENT OF THE DISTRICT COURT
SHOULD BE REVERSED

Dated: New York, New York
September 7, 1977

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Appellants

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

ARLENE R. SILVERMAN
Assistant Attorney General
Of Counsel

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received by
Peggy Horner
Legal Aid Society

